

REMARKS/ARGUMENTS

This Amendment is filed in response to the Final Office Action mailed June 7, 2004. Claims 1-17 were pending. Claims 1-6, 8-11, 13-15 and 17 were rejected under 35 U.S.C. Section 102 as anticipated by U.S. Patent 5,282,326 to Schroer, Jr. et al. Claims 7, 12 and 16 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent 5,282,326 to Schroer, Jr. et al. Claims 2-4 and 6-17 were rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. Applicants respectfully traverse these rejections for the reasons set out hereinafter.

The rejection of claims 2-4 and 6-17 under 35 U.S.C. Section 112, second paragraph, as being indefinite is respectfully traversed. The Examiner continues to assert, without authority, that portions of the human foot differ in placement, size and shape on people who wear the same size shoe. Applicants respectfully disagree in that the shoe size does generally give the positions of such bone structure in the normal foot as the bones clearly define what the foot size is. To a practical degree of precision, there seems no more definite way to properly describe the invention. Applicants clearly are not claiming a human foot, but are claiming an insole that has a certain shape, size and configuration relative the human foot to which it is intended to be used with. Thus, Applicants respectfully assert the claims are definite and meet the requirements of Section 112. In support of this position, attached is the Declaration of Dr. J. Pat Evans, one of the co-inventors of the present application. Dr. Evans has significant knowledge of and experience related to the human foot as a specialist in orthopedic and sports medicine. As Dr. Evans explains, the bones of the normal human foot for a given shoe size are supported on essentially the same portions of the insole.

The rejection of claims 1-6, 8-11, 13-15 and 17 under 35 U.S.C. Section 102(b) as anticipated by U.S. Patent 5,282,326 to Schroer, Jr. et al is also respectfully traversed. There is no disclosure in Schroer, Jr., et al that an insole has a raised arch support portion defined by a curve having a first endpoint located on a medial edge of the insole corresponding generally to a forwardmost medial point of the longitudinal arch and a second endpoint located rearward of the first endpoint on a medial edge of the insole wherein the curve extends forwardly and laterally from the first endpoint through a point generally corresponding to a midway point between a second metatarsal head and a third metatarsal head of the foot, extends rearwardly along a medial edge of a fifth metatarsal of the foot, and extends rearwardly and medially to the second endpoint. As evidence to the contrary, the Examiner refers to Figure 1 of Schroer, Jr. et al. However, the Figure does not provide such disclosure. It is well established that patent drawings are not blue prints. The reference clearly does not teach the critical relationships between the elements of the claimed invention and the human foot that it contacts. The present application, however, adds to the knowledge in the art by specifically disclosing and claiming the relationships stated.

Further, the Schroer, Jr. et al patents describes that the forward toe portion 4 works to support the metatarsals at Column 7, lines 53-54. The Schroer, Jr. et al patent does not describe the arch portion 8 as supporting the metatarsals. In contrast, the present invention as claimed in Claim 2 provides the curve of the raised arch support portion passes through a point generally in contact with a midway point between a second metatarsal head and a third metatarsal head, and extends rearwardly along a medial edge in contact with the fifth metatarsal head. Claim 4 recites the curve passes through points generally corresponding to the first through fourth metatarsal heads of the foot, and tangent to the fifth metatarsal shaft. Claim 9 has language similar to Claim 2, including also the recitation that the curve extend to a point generally corresponding to the fourth metatarsal head. As the head of the metatarsal is the forwardmost part of the metatarsal, it is clear the present invention assists to support these bones. As it is well understood that a proper rejection under Section 102 must disclose each and every element of the claimed invention, Applicants respectfully request the rejection be withdrawn and the claims allowed.

Similarly, Figure 3 of Schroer, Jr. et al does not disclose the curve extending across a point generally corresponding to a cuboid of the foot, a raised arch support portion with a maximum height dimension substantially midway between a first metatarsal head and an Astragalus of the human foot, or a raised arch support portion has a maximum height dimension midway between a Tibialis Anticus of the human foot.

The rejection of claims 7, 12 and 16 as obvious over Schroer, Jr. et al is also respectfully traversed. Again, the Schroer, Jr. et al patent has no disclosure or suggestion for a curve as set forth above. Thus, these claims are believed patentable over the cited reference as well.

In addition, new claims 42-44 have been added by this amendment to further describe features of the present invention. These claims discuss the composition of the footbed, its hardness, density and rebound characteristics.

Applicants respectfully request that a timely Notice of Allowance be issued in this application. A petition for a two month extension of time to respond to the Office Action is filed herewith. No additional fees are believed necessary for the proper filing of this Amendment. However, if any fees are necessary, including and extension fees under Rule 136, please withdraw such fees as are necessary from Deposit Account 50-1274(10368/24701).

Respectfully submitted,



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